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16 UNITED STATES OF AMERICA

17 UNITED STATES DISTRICT COURT

18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,

20 CR No. 15-00131-JFW

21 Plaintiff,

22 OPPOSITION TO DEFENDANT'S MOTION  
TO SUPPRESS EVIDENCE

23 v.

24 TEOFIL BRANK,  
25 aka "Jarec Wentworth,"  
26 Defendant.  
27  
28

Hearing Date: May 4, 2015  
Hearing Time: 10:00 a.m.  
Location: Courtroom of the  
Hon. John F. Walter

Plaintiff United States of America, by and through its counsel of record, the Acting United States Attorney for the Central District of California and Assistant United States Attorney Kimberly D. Jaimez, hereby files its opposition ("Opposition") to Defendant's Motion to Suppress Evidence (Dkt. No. 48) ("Motion" or "Def. Mot.") filed on April 16, 2015 by defendant concurrently with the Declaration of TEOFIL BRANK and the Declaration of Seema Ahmad ("Ahmad Decl.").

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This Opposition is based upon the attached memorandum of points and authorities, the Declaration of Special Agent Joseph Brine, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: April 27, 2015

Respectfully submitted,

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/s/  
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## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

TEOFIL BRANK ("defendant") is charged with one count of 18 U.S.C. § 875(d) (Sending Interstate Communications with Intent to Extort) and was initially arrested for this charge on March 4, 2015 at a Starbucks Coffee Shop in El Segundo, California.

Contemporaneous with arrest, FBI agents discovered that defendant had arrived at the Starbucks in a Ford Focus with an associate, later identified as Etienne Yim ("Yim"). After Yim's arrest, Yim consented to a search of Yim's Ford Focus. Before conducting the search, agents called the phone used by defendant for the extortion and, immediately, heard a phone ring from inside the car. Yim identified the phone, along with the black backpack lying next to the phone on the front center console of the passenger compartment, as defendant's possessions. A brown leather firearm case was visibly protruding from the backpack. With these observations and information, agents then searched the Ford Focus, the backpack, and the brown case, which contained a revolver. Defendant has moved to suppress the backpack (and the firearm case) arguing that Yim (1) did not voluntarily consent to the search of his car and (2) did not have authority to authorize any search of defendant's backpack. (Def. Mot., 2).

As a preliminary matter, the defendant does not have standing to challenge Yim's consent with respect to the search of the Ford Focus leased in Yim's name. Therefore, defendant's challenge to the validity of Yim's consent has no merit.

More importantly, however, the generally undisputed facts demonstrate that the warrantless searches of the Ford Focus and defendant's backpack were justified as (1) probable cause searches,

1 (2) searches incident to arrest, and (3) protective searches pursuant  
2 to Terry v. Ohio. These searches were never based on Yim's consent  
3 to search car alone. Because defendant had been arrested immediately  
4 before the search (and agents had probable cause to arrest Yim),  
5 agents had reason to believe that fruits or instrumentalities of the  
6 extortion scheme would be in the backpack and the Ford Focus in which  
7 both men arrived. As such, agents were justified in searching both  
8 the backpack (along with its contents) and the vehicle – even without  
9 Yim's consent.

10 **II. STATEMENT OF FACTS**

11 The facts relevant to defendant's Motion are relatively  
12 undisputed. FBI agents arrested defendant for extortion on March 4,  
13 2015, at 8:40 p.m., in the parking lot of an El Segundo Starbucks  
14 coffee shop. (Ahmad Decl., Ex. A, FD-302 of SA Jonathan Bauman,  
15 hereinafter "Bauman 302," p.1). On or about March 3, 2015, the day  
16 before defendant's arrest and the search at issue, the Victim of the  
17 extortion scheme met with the FBI to report defendant's previous and  
18 continued extortion attempts threatening Victim's reputation via  
19 cellular telephone. (Brine Decl., ¶ 2). The Victim also explained  
20 to the FBI that, as a result of the extortion, the Victim had already  
21 wired the defendant \$500,000 and had given defendant possession of  
22 the Victim's Audi r8. (Id.) During this meeting, defendant sent the  
23 Victim extorting text messages from phone number 916-420-7906,  
24 demanding additional money and a condominium, and then ultimately  
25 \$1,000,000 in cash. (Id.) Agents reviewed those text messages and  
26 directed the Victim to respond. (Id.) Specifically, the Victim was  
27 directed to arrange a meeting between defendant and an undercover  
28 agent, who would pose as the Victim's associate, to deliver the

1 demanded \$1,000,000. (Id.) The meeting was scheduled for March 4,  
2 2015 at the Starbucks coffee shop. (Id., ¶ 3)

3       **A. Alerts Regarding Other Potential Participants**

4       Just hours before the March 4, 2015 meeting, defendant called  
5 the Victim in a recorded phone call and indicated that defendant  
6 would not be coming to the meeting alone. (Id., ¶ 4). Agents  
7 conducting surveillance at the Starbucks received word that defendant  
8 may be accompanied and to be on alert of additional participants at  
9 the scene. (Id.)

10      **B. Undercover Meeting**

11       At approximately 8:30 p.m. on March 4, 2015, an undercover agent  
12 (posing as an associate of the Victim) met with defendant inside the  
13 Starbucks to deliver the title to the Audi r8 and \$1,000,000 in cash  
14 to defendant. (Id., ¶ 5; FD302 of SA Sean Sterle attached hereto as  
15 Exhibit 1, hereinafter "Sterle 302," p.1). The undercover agent gave  
16 defendant the vehicle title inside the Starbucks and then led  
17 defendant outside the Starbucks ostensibly to deliver a bag holding  
18 the cash when agents arrested defendant for extortion. (Sterle 302,  
19 pp. 1-2). At the time of arrest, agents recovered from defendant's  
20 person the certificate of title in the name of the Victim. (Bauman  
21 302, p.2). Defendant did not have the 916-420-7906 cellular phone,  
22 used in by defendant in the extortion, on his person at the time of  
23 arrest. (Brine Decl., ¶ 5).

24       Immediately following the arrest, FBI SA Bauman noticed an  
25 unknown male, later identified as Yim, seated in the driver's seat of  
26 a Ford Focus parked in close proximity to where the arrest occurred.  
27 (Bauman 302, p.2). When SA Bauman asked Yim about his purpose for  
28 being in the area, Yim said he was "just waiting." (Id.) Upon

1 further questioning, Yim stated something to the effect of "I am here  
2 to pick up my friend." (Id.) The agent asked Yim to get out of his  
3 car and asked about the location of the "friend." (Id.) When Yim  
4 pointed towards the Starbucks, SA Bauman asked for the name of the  
5 friend, to which the man responded "Teo." (Id.) The agent then  
6 immediately detained the man under suspicion he was associated with  
7 Teofil Brank and the extortion. (Id.) Yim subsequently confirmed he  
8 was waiting for defendant. (Id.)

9       **C. Search of Ford Focus & Black Backpack**

10       Following Yim's detention, agents conducted a brief protective  
11 sweep of the passenger compartment of Yim's Ford Focus. (Id.)  
12 Supervisory Special Agent ("SSA") Joseph P. Brine then asked Yim for  
13 permission to search the Ford. (Id.) Yim consented. (Id.) Yim also  
14 stated that he would assist agents in locating items in the vehicle  
15 belonging to defendant. (Id.) SSA Brine walked Yim to the Ford Focus  
16 and then asked SA Aguirre to call the 916-420-7906, the number of the  
17 phone defendant had used to communicate the extortion threats,  
18 because the phone had still not been located. (Brine Decl., ¶ 6). SA  
19 Aguirre had the Victim call the 916-420-7906. (Id.) SSA Brine heard  
20 the phone ring from inside Yim's Ford Focus. (Id.) Yim thereafter  
21 identified (1) the Samsung cellular telephone and (2) the black High  
22 Sierra brand backpack (both lying on the center console of the front  
23 passenger compartment) as belonging to defendant. (Id.; Bauman 302,  
24 p.2). SSA Brine also saw a brown leather case sticking out of the  
25 top of the backpack. (Bauman 302, pp. 2-3). SSA Brine noted that  
26 the case appeared to be the type of case commonly used to store  
27 firearms, undid the zipper of the case and confirmed the presence of  
28 a revolver. (Id.) Subsequently, the black backpack belonging to

1 defendant, including the case with the revolver, was seized as  
2 evidence.<sup>1</sup> (Id.)

3 After the arrest, agents later confirmed that Yim was the  
4 registered owner of the Ford Focus as evidenced by Exhibit 2 attached  
5 hereto.

6 **III. ARGUMENT**

7       **A. Defendant Lacks Standing to Challenge the Search of the Car  
8 Based on Yim's Consent**

9       As a threshold matter, while defendant has standing to challenge  
10 the search of his backpack, defendant does not have standing to  
11 challenge the validity of Yim's consent to generally search the Ford  
12 Focus leased in Yim's name. United States v. Wanless, 882 F.2d 1459,  
13 1462 (9th Cir. 1989) ("as a general rule, only the owner of the  
14 vehicles or an individual with a legitimate privacy interest in the  
15 vehicles may challenge an allegedly illegal search."). Therefore,  
16 defendant's arguments regarding the voluntariness of Yim's consent to  
17 search the Ford Focus lack merit.

18       **B. There was Probable Cause to Search the Ford Focus and  
19 Containerers Therein**

20       Agents searched the defendant's backpack, not on the basis of  
21 Yim's consent, but because FBI agents had probable cause to believe  
22 that the Ford Focus and defendant's backpack contained evidence of  
23 criminal activity, namely extortion. Probable cause to search exists  
24 generally if, under the totality of the circumstances, there is a  
25 "fair probability that contraband or evidence of a crime will be  
26 found in a particular place." Illinois v. Gates, 462 U.S. 213, 238  
27 (1983); United States v. Alvarez, 899 F.2d 833, 836, 839 (9th

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28       <sup>1</sup> Defendant does not seek to suppress the cellphone.

1 Cir.1990). It is a fluid concept dependent on the particular factual  
2 context supported by the officers' observations. Id. at 232.  
3 Furthermore, it is an objective standard that analyzes whether the  
4 facts are sufficient to warrant a man of reasonable prudence to  
5 believe that evidence of a crime will be found. United States v.  
6 Henderson, 241 F.3d 638, 648 (9th Cir. 2000), as amended (Mar. 5,  
7 2001).

8           1. Agents Had Probable Cause to Search the Ford Focus

9           Pursuant to the automobile exception, law enforcement may  
10 conduct a warrantless search of a vehicle if there is probable cause  
11 to believe that the vehicle contains evidence of a crime. California  
12 v. Carney, 471 U.S. 386, 391-93 (1985) (search of motor home valid  
13 because police had probable cause to believe occupant was selling  
14 narcotics); Henderson, 241 F.3d at 648 (probable cause existed to  
15 search vehicle for evidence of robbery after defendant's arrest for  
16 robbery). And "as is often the case, the questions of whether the  
17 agents had probable cause to arrest . . . and whether they could  
18 search [the arrestee's] car rest on the same evidence." Henderson,  
19 241 F.3d at 648.

20           In Henderson, for example, the Ninth Circuit determined that  
21 agents had probable cause to search the car of the "Wig Bandit" who  
22 had just been arrested for several bank robberies. Id. The court  
23 held that it was reasonable for agents to believe that the Wig Bandit  
24 kept his costumes from the robberies and that the costumes might have  
25 been in the car because he tended to reuse such outfits. Because the  
26 Wig Bandit was known to only be visiting the area at the time of his  
27 arrest, agents could infer that one of the costumes might have been  
28 in the luggage in the car. Additionally, when a witness mentioned

1 there was a gun in the car, and the agents knew the Wig Bandit had  
2 used a handgun in the previous robbery, agents had another reason to  
3 believe evidence of the robberies could have been in the Wig Bandit's  
4 car. This probable cause existed even though it had been two weeks  
5 since the last robbery.

6 Here, agents had even more compelling evidence of probable  
7 cause. Like Henderson, the probable cause to search the Ford Focus  
8 in which defendant arrived at the Starbucks and the probable cause to  
9 arrest defendant for extortion rest on many of the same facts. After  
10 sending text messages to the Victim furthering the extortion,  
11 defendant arrived at the Starbucks, met with an agent, and attempted  
12 to obtain the title to the Victim's Audi r8 as well as additional  
13 extortion proceeds. Agents knew that defendant had already obtained  
14 \$500,000 and had possession of the Victim's Audi r8 at the time of  
15 the search. Defendant's attempted pick-up of extortion proceeds had  
16 occurred only moments before defendant's arrest and the search of the  
17 Ford Focus, in which defendant had recently been a passenger. At the  
18 time of arrest, defendant did not have the 916-420-7906 (used to  
19 communicate extortionate messages) on his person. However, when the  
20 Samsung phone corresponding to 916-420-7906 was called by the Victim  
21 (at agent's request), SSA Brine heard the phone ringing from inside  
22 the Ford Focus. Yim expressly told agents that the Samsung phone  
23 next to the backpack on the center console both belonged to  
24 defendant.<sup>2</sup> Just before the search, the SSA Brine also saw a case  
25 sticking out of the backpack consistent with a gun case.

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<sup>2</sup> Defendant does not have standing to challenge Yim's statements.

1       Based on these facts a reasonable person, and specifically a law  
2 enforcement agent, could conclude that further evidence of the  
3 extortion could be found in the Ford Focus in which defendant arrived  
4 to pick up the \$1,000,000. Agents could reasonably infer that they  
5 would likely uncover evidence of the extortion in the Ford Focus  
6 (i.e., the phone used to extort, the Audi car keys, relevant  
7 photographs related to the threatened extortion, key bank documents  
8 evidencing the prior \$500,000 wire transfer, receipts, or other items  
9 related to the completed and ongoing extortion concerning the  
10 Victim's reputation).

11       Because probable cause extended to all containers in the Ford  
12 Focus, the agents also had probable cause to search the backpack in  
13 the center console for evidence of extortion. United States v. Ross,  
14 456 U.S. 798, 821 n.28 (1982) (probable cause to search entire  
15 vehicle for drugs justified search of packages in the trunk of  
16 vehicle).

17              2. Agents Had Probable Cause to Search the Backpack Alone

18       Additionally, agents also had probable cause to search the  
19 backpack specifically because Yim identified it as belonging to  
20 defendant. Law enforcement may search a container in a vehicle if  
21 probable cause exists to search the container itself. California v.  
22 Acevedo, 500 U.S. 565 (1991). In this case, defendant's  
23 contemporaneous arrest coupled with information that the defendant  
24 arrived with Yim and Yim's identification of the backpack as  
25 defendant's, provide a fair probability that evidence of the  
26 extortion or related to the extortion (i.e., Audi car keys, bank  
27 documents, photographs, and the like) could likely have been  
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1 contained in the backpack itself lying next to the extortion cellular  
2 phone.

3       **C. The Search Was a Valid Search-Incident-to-Arrest**

4       Further, in addition to the probable cause basis, the search of  
5 the Ford's passenger compartment and the defendant's backpack were  
6 valid searches-incident-to-arrest, another exception to the Fourth  
7 Amendment warrant requirement. In Arizona v. Gant, 556 U.S. 332,  
8 343-44 (2009), the Supreme Court held that circumstances unique to  
9 the vehicle context justify a search incident to a lawful arrest when  
10 it is "reasonable to believe evidence relevant to the crime of arrest  
11 might be found in the vehicle." While the Court in Gant found the  
12 search of the vehicle to be illegal in that context because the  
13 arrest was for a suspended license (and the vehicle was unlikely to  
14 hold relevant evidence regarding that traffic offense), the Court  
15 noted that in other contexts such as this one, "the offense of arrest  
16 will supply a basis for searching the passenger compartment of an  
17 arrestee's vehicle and any containers therein." Gant, 556 U.S. at  
18 343-44 (citing Thornton v. U.S., 541 U.S. 615, 632 (2004) (search  
19 incident to arrest upheld where recent occupant of vehicle was  
20 arrested outside of vehicle for possessing controlled substances);  
21 see also New York v. Belton, 453 U.S. 454, 101 (1981) (abrogated on  
22 other grounds) (upholding search of vehicle incident to arrest for  
23 drug offense). The Court noted that in such cases as Thornton and  
24 Belton, where there was a clear "evidentiary basis" to believe  
25 evidence of the crime may be found in the vehicle, the search  
incident to arrest exception applies. Gant, 556 U.S. at 343-44. See  
27 also United States v. Weaver, 433 F.3d 1104, 1106 (9th Cir. 2006)  
28 (upholding a search of vehicle incident to arrest conducted 10 to 15

1 minutes after an arrest and after the arrestee had been handcuffed  
2 and secured in the back of a patrol car); United States v. Burnette,  
3 698 F.2d 1038, 1049 (9th Cir. 1983) (police officer may, incident to  
4 a lawful arrest, conduct a contemporaneous warrantless search of the  
5 arrestee's person and of the area into which the arrestee might reach  
6 to destroy evidence and containers found within that area may also be  
7 searched contemporaneously with the arrest). Finally, the search-  
8 incident-to-arrest exception applies to the passenger compartment and  
9 its containers in a vehicle used by the arrestee, even when officer  
10 does not make contact with the vehicle until after the person  
11 arrested has already left the vehicle. Thornton, 541 U.S. 615.

12 Here, defendant was not arrested pursuant to a traffic violation  
13 or suspended license, rather defendant was arrested on suspicion that  
14 he extorted the Victim (and received \$500,000 as well as an Audi r8  
15 as a result). Furthermore, defendant was arrested only a few feet  
16 away from Yim's Ford Focus and Yim admitted that he was waiting there  
17 for "Teo." This information coupled with defendant's statements to  
18 the Victim that he was not coming alone confirmed to agents that  
19 defendant had arrived in Yim's Ford Focus. When Yim told the agents  
20 that the Samsung phone and the backpack belonged to the defendant,  
21 agents had a reasonable basis to believe that this backpack in the  
22 passenger compartment of the Ford Focus, contained evidence relevant  
23 to the extortion scheme, including potentially the car keys for the  
24 Audi, bank records, and other items discussed above.

25 Search incident to arrest of vehicles and containers typically  
26 only become problematic when they are conducted well after arrest.  
27 See United States v. Vasey, 834 F.2d 782, 787 (9th Cir. 1987) (search  
28 of suspect's car 30 to 45 minutes after suspect was arrested,

1 handcuffed and placed in back seat of police cruiser not incident to  
2 lawful arrest); United States v. Monclavo-Cruz, 662 F.2d 1285 (9th  
3 Cir. 1981) (warrant was required where container is not searched  
4 immediately but was instead taken to the police station well after  
5 arrest). Here, however, there no issue regarding the  
6 contemporaneoussness of the agent's search. SA Bauman's report,  
7 attached to the Ahmad Declaration, indicates that agents began  
8 questioning Yim immediately after defendant's arrest and such  
9 questioning quickly resulted in Yim's detention followed by the  
10 search. (Bauman 302, pp.2-3)

11 Additionally, because agents knew defendant was accompanied for  
12 the extortion pick-up, agents had probable cause to arrest Yim and  
13 then search all the contents of Yim's vehicle as a valid search-  
14 incident-to-arrest of Yim. Such a search need not occur after the  
15 arrest, but can occur so long as probable cause to arrest existed  
16 prior to the search (as it did here). Rawlings v. Kentucky, 448 U.S.  
17 98, 111 (1980) (reasoning that it was not "particularly important  
18 that the search preceded the arrest" because police had probable  
19 cause to arrest the defendant when he admitted to ownership of  
20 drugs); United States v. Smith, 389 F.3d 944, 952 (9th Cir. 2004)  
21 (search of the vehicle before the formal arrest valid because officer  
22 had probable cause to arrest for false impersonation).

23       **D. The Search Was a Valid Terry Protective Sweep**

24 Finally, the search of the passenger compartment of Ford Focus  
25 (and the backpack with a gun case) was reasonable under the  
26 principles articulated in Terry v. Ohio, 392 U.S. 1, 21 (1968). In  
27 Michigan v. Long, 463 U.S. 1032 (1983), the Supreme Court held that  
28 an officer may search a vehicle's passenger compartment when he has

1 reasonable suspicion that an individual, whether or not the arrestee,  
2 is "dangerous" and might access the vehicle to "gain immediate  
3 control of weapons." Id., at 1049 (citing Terry, 392 U.S. at 21).  
4 If, while conducting a legitimate Terry search of an automobile's  
5 interior, the officer discovers contraband other than weapons, he  
6 cannot be required to ignore such items. Michigan, 463 at 1033.

7 In this case, agents detained Yim on suspicion he was connected  
8 to the extortion. Agents were, thus, authorized under Michigan and  
9 Terry to conduct a protective search of the vehicle's passenger area  
10 to ensure there were no weapons inside the Ford Focus. In fact, a  
11 revolver case (containing a Colt Python revolver) was present and  
12 could have posed a risk to officer safety. The search of the leather  
13 case, at minimum, should stand as a protective Terry search.

14 **IV. CONCLUSION**

15 For the foregoing reasons, the government respectfully requests  
16 that this Court deny defendant's Motion to suppress the backpack and  
17 its contents.

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